PROOF OF SERVICE

I, Saul Stone, attorney for Lawrence J. Reynolds, d/b/a Larry & Katz; David Y. Martin, Jr., d/b/a Martin Wine Cellar; and Schwegmann Brothers Giant Super Markets, respondents herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the _____ day of September, 1966, I served copies of the foregoing brief on the Retail Liquor Dealers Association of Louisiana, Inc., petitioner, by depositing the same in a United States mail box, with first class postage prepaid, addressed to the petitioner's counsel of record, Benjamin H. Dorsey of Brookhart, Becker & Dorsey, 1700 K Street N.W., Washington, D.C., and Risley C. Triche of Triche & Sternfels, Napoleonville, Louisiana.

_____

SAUL STONE

New Orleans, Louisiana

September _____, 1966

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 532

RETAIL LIQUOR DEALERS ASSOCIATION OF LOUISIANA, INC., ET AL., *Petitioners*,

v.

LAWRENCE J. REYNOLDS, d/b/a LARRY AND KATZ, ET AL., *Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of Louisiana

PETITIONERS' REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION

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Just as respondents are mistaken in their statement that the petition for certiorari fails to mention that the April 1, 1966, decision of the Louisiana Supreme Court held Act 290 of 1964 violative of the Louisiana

State Constitution as well as the Federal Constitution,[1] so are they in error in their assertion that such decision is not reviewable by this Court.

The determination rests with this Court, applying its own standards in determining the adequacy of the nonfederal ground, whether certiorari should be granted in this instance. *Abie State Bank* v. *Bryan,* 282 U.S. 765, 773 (1931); *Staub* v. *Baxley,* 355 U.S. 313, 318-319 (1958).

From an early date this Court has recognized that "* * * where the non-Federal ground is so interwoven with the other [Federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain." *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.,* 243 U.S. 157, 164 (1917); cf. *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275, 290 (1958); Stern and Gressman, *Supreme Court Practice* (3rd Ed. 1962), pp. 110-111.

The Supreme Court of Louisiana has heretofore recognized that the Due Process Clause of the Louisiana Constitution must be identically construed by the Louisiana courts with the opinions of this Court respecting the Due Process Clause of the Federal Constitution. In *Board of Barber Examiners* v. *Parker,* 190 La. 214, 182 So. 485 (1938), the Louisiana Supreme Court said:

> "The Court of last resort of the Nation having held that a price fixing statute or regulation enacted by the legislative department of a sovereign

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[1] See the first full paragraph on page 7 of the Petition which quotes the holding of the April 1, 1966, decision.

> State under its police power concerning a business or trade affected with a public interest and having real and substantial relation to the public welfare, health and safety does not violate the due process clause of the Federal Constitution, and the provisions of our own Constitution being identical with those of the Fourteenth Amendment, we consider the question settled, although the opinions of the United States Supreme Court were not unanimous." 182 So. 511-512.

The April 1, 1966, decision of the Louisiana Supreme Court striking down Act 290 of 1964 of the Louisiana legislature is squarely in conflict with, and diametrically opposed to, the unanimous decision of this Court rendered April 19, 1966, in *Joseph E. Seagram & Sons, Inc.* v. *Hostetter,* 384 U.S. 35, as respondents tacitly concede in their brief. Since by the holding in *Barber Examiners* v. *Parker, supra,* the provisions of the Due Process Clause of the Louisiana State Constitution and the Federal Constitution are identical, such provisions are inextricably "interwoven", and are, therefore, *not* "independent". The jurisdiction of this Court is, accordingly, "plain". *Enterprise Irrigation District* v. *Farmers Mutual Canal Co., supra.*

In addition to the foregoing ground sustaining certiorari jurisdiction of this Court in this instance, the April 1, 1966, decision of the Louisiana Supreme Court is so palpably erroneous that this Court would be warranted in reaching the conclusion that the decision upon "* * * the non-Federal ground is so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question." *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.,*

supra, at 243 U.S. 164. Where the non-Federal ground relied upon by the state court is "without any fair or substantial support", as in this case, the jurisdiction of this Court may not be defeated. *Ward* v. *Board of County Commissioners,* 253 U.S. 17, 22 (1920); *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449, 455 (1958); see Note, The Untenable Nonfederal Ground in the Supreme Court, 74 Harvard Law Review 1375 (1961).

The writ of certiorari should therefore be granted and the judgment of the Supreme Court of Louisiana reversed.

Respectfully submitted,

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